

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 586 of 2016

Anusri DasApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Gourav Halder,
Advocate.**

**For the State Respondent:- Mr. Sankha Ghosh,
Mr. Sunita Agarwal,
Advocates.**

Judgment delivered on : 30.11.2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“(a) a direction do issue upon the concerned respondent authorities, particularly upon the Director of Health Services, Health & Family Welfare Department, West Bengal being the respondent no. 2 herein to forthwith set-aside/rescind/cancel/withdraw the impugned order of suspension of the applicant vide No. C/31 Kolkata 01.02.2016 issued by him being Annexure “A” herein, and to allow the applicant to resume her duties as usual in service in accordance with law.

(b) A direction do issue upon the concerned respondent authorities to pay her arrear salary after calculating the subsistence allowance with effect from 11.01.2016 as provided in the West Bengal Service Rules.

(c) A direction do issue directing the respondent authorities to produce and/or cause to be produced the relevant records in connection with the instant application for proper adjudication of the same.

(d) Any other appropriate order/orders direction/directions as this Hon’ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice.”

2. The case of the applicant is as follows:

- (i) The admitted fact of the case is that the applicant while working as Auxiliary Nurse Midwifery (R) under the Health & Family Welfare Department was placed under suspension with effect from 11.01.2016 vide suspension order dated 01.02.2016 on the ground of being detained in custody for a period exceeding 48 hours in connection with Egra P.S. Case No. 01/2016 dated 02.01.2016 u/s 420/384/323/307/506/34 I.P.C. under the provisions of Sub-Rule (3) of Rule 7 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 and remained under suspension till date (Annexure A).
- (ii) As per the applicant, she was granted bail by the competent Court of Law vide order dated 05.02.2016 (Annexure B). Subsequently, charge sheet was submitted by the Investigating Officer before the Criminal Court on 31.05.2016 (Annexure "S" of supplementary application) with regard to the said criminal case. However, in the mean time, the applicant made representation dated 29.02.2016 and 16.03.2016 (Annexure C collectively) with a prayer to allow her to resume her duty after revoking the suspension order.
- (iii) As per the counsel for the applicant, she was suspended in the year 2016 and was also released on bail. Subsequently, till date, neither any disciplinary proceeding has been initiated nor suspension order has been revoked. Therefore, the respondent should be directed to withdraw the suspension order and make payment of arrear salary in favour of her. In support of his contention the counsel for the respondent has submitted that they will not file any reply and the impugned suspension order may be treated as

reply. The counsel for the applicant has referred the following judgements

“(i) Suman Roy Chowdhury –Vs- State of West Bengal & Others reported in (2007) 3 SLR 809

(ii) Union of India –Vs- Dipak Mali reported in (2010)2 SCC 222”

3. We have heard both the parties and perused the records as well as the judgements. It is noted that the applicant was suspended under Sub Rule (3) of Rule 7 of West Bengal Services (CCA) Rules 1971, which stipulates inter alia:

Rule 7 (3)

“A Government employee who is detained in custody for a period exceeding 48 hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the appointing authority, with effect from the date of his detention and shall remain under suspension until further orders. A Government employee who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him.”

From the perusal of the suspension order dated 01.02.2016 as well as Rule 7(3) of West Bengal Services (CCA) Rules 1971, it transpires that the applicant was suspended u/s 420/384/323/307/506/34 I.P.C. and was under custody beyond 48 hours and subsequently got bail on 05.02.2016.

Therefore, as per Rule 7(3) of West Bengal Services (CCA) Rules, 1971, the Government employee, who was detained under custody for a period exceeding 48 hours shall be deemed to have been suspended with effect from his detention and shall remain suspended until further orders. Therefore, the applicant has been rightly suspended under Rule 7(3) of West Bengal Services (CCA) Rules, 1971. Moreover, in the aforesaid Rule, it has been stipulated that the employee shall remain suspended until further orders. However, the counsel for the applicant has submitted that the suspension order should be revoked as till date no disciplinary proceeding has been initiated. However, from the perusal of the West Bengal Services (CCA) Rules, 1971, it is noted that any employee would have been placed under suspension under Rule 7(1) i.e. in contemplation of disciplinary proceeding and departmental enquiry against the said Government employee. But there is no such provision under Rule 7(3). Moreover, if any employee would be suspended under Rule 7(3) and no disciplinary action would be initiated against him in that case his suspension could be reviewed and/or revoked if he would be exonerated from criminal case.

Further, the case of **Dipak Mali Supra** is not applicable as the applicant in the aforesaid case was suspended under Rule 10 CCS(CCA) Rules, 1965 as amended by Notification dated 23.12.2003, wherein under Sub Rule 6 & 7, there is a specific provision under Rules to review the suspension order, before expiry of 90 days from the date of suspension. However, in the instant case, the applicant has been suspended under Rule 7(3), where there is a specific provision for suspension under certain

situation until further order. Moreover, the applicant has not challenged the said Rules. Therefore, as the said Rule is still in existence, the applicant may be put under suspension until further order as per the provision of the Rule. Therefore, the aforesaid judgment is quite distinguishable in view of the facts and circumstances of the instant case. Further the case of Suman Roy Chowdhury Supra is also not applicable as in the said case, the applicant was already granted bail before the issuance of the order of suspension. But in the instant case, the applicant was under suspension vide order dated 01.02.2016, whereas she was granted bail on 05.02.2016. Therefore, the afore-mentioned case is not at all applicable in the instant application. Moreover, the same issue has already been considered by us in OA No.- 890/2007 in order dated 12.10.2018 which is squarely applicable in the instant case.

4. In view of the above, we do not find any reason to interfere with the impugned order of suspension. Accordingly, **the O.A. is dismissed** with the above observations with no order as to cost. However, the respondents would be at liberty to review the suspension order, if so desired.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)